

## **REMARKS**

The final Office Action mailed July 17, 2009 (hereinafter, "Office Action") has been reviewed and the Examiner's comments considered. Claims 1, 2, 6-11, 14, 15, 17, and 19-25 are pending in this application. Claims 1, 17, 19, and 24 have been amended herein, support for which may be found in the originally filed application at, for example, paragraphs [0020] and [0028]-[0030], and originally filed FIG. 1. Claims 3-5, 12, 13, 16, and 18, indicated as withdrawn from consideration, are no longer pending in the case, having been previously canceled. Applicants submit that no new subject matter has been introduced.

### **Claim Rejections - 35 U.S.C. § 102**

Claims 1, 2, 6-11, 14, 17, 19-22, 24, and 25 stand rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4,029,095 to Pena et al. (hereinafter, "Pena"). Applicants respectfully traverse this rejection.

Claim 1 recites, *inter alia*, "[a] manually operable pump for removing fluids from a body cavity of a subject, said pump comprising . . . an inflow connector attached to said first end, said inflow connector being adaptable for connection to an inflow conduit, the inflow conduit comprising a pleural evacuation tube for removing fluid from a plural space."

Claim 24 recites, *inter alia*, "[a] method of removing fluid from a plural space of a body cavity of a subject, comprising: attaching a manually operable pump to a proximal end of an implanted catheter, the manually operable pump in fluid communication with a fluid receptacle via an inflow conduit comprising a pleural evacuation tube for removing fluid from the plural space."

Pena does not teach such systems and methods. Pena relates to a device for circulating treating fluid through the nasal fossae. (Title). The device of Pena does not include a pleural evacuation tube for removing fluid from a plural space. Additionally, Pena does not teach a method of removing fluid from a plural space of a body cavity via an inflow conduit comprising a pleural evacuation tube.

In contradistinction to the Pena system that circulates treatment fluid, the systems and methods of the instant application related to removing fluid from a plural space using a pleural evacuation tube. Such a device allows for the use of a manual pump that performs better than the standard of care. (See ¶ [0029]).

Accordingly, for at least these reasons, independent claims 1, 17, 19, and 24 are patentable over Pena. Claims 2, 6-11, 13-14, 20-22, and 25 are patentable because they depend from a patentable independent claim, and also because they recite features not shown or described by the cited art. Therefore, Applicants request favorable reconsideration and withdrawal of the rejections under 35 U.S.C. § 102.

### **Claim Rejections - 35 U.S.C. § 103**

Claims 15 and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pena. Applicants respectfully traverse this rejection.

Without conceding the allegations in the office action, Applicants submit that claims 15 and 23 are patentable at least because they depend from a patentable independent claim, in view of the above. Therefore, Applicants request favorable reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

### **Conclusion**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

It is noted that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between the cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example.

Consistent with the foregoing, the discussion herein should not be construed to prejudice or foreclose future consideration by Applicants of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner and/or the merits of additional or alternative arguments.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-2191 referencing docket no. 101672.0071P from which the undersigned is authorized to draw.

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Respectfully submitted,

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